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APPEAL BRIEF

for

Attorney Docket Number: FSP0181

Client Reference Number: 267644US

Title: METHOD AND APPARATUS FOR IDENTIFYING A SIGNAL ROUTE
FOR DELIVERY OF
VIDEO ON DEMAND TO A SUBSCRIBER TERMINAL

Application Number: 09/759,935

Filing Date: Friday, January 12, 2001

First Named Inventor: Schiller, Jay B.

Group Art Unit: 2611

Examiner Name: Brown, Reuben

Charles A. Mirho
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Submitted by:

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First Named Inventor: Schiller, Jay B.
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Examiner Name: Brown, Reuben

Appeal is taken from the Examiner's most recent office action mailed on 12/16/2005.

This appeal brief complies with the revised format specified in MPEP 1205 [R-3].

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REAL PARTY IN INTEREST

The real party in interest is

Broadband Royalty Corporation
1105 North Market St.
Suite 1300
Wilmington, DE, USA

the assignee and/or owner of all rights and interest in the subject matter of this appeal.

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RELATED APPEALS AND INTERFERENCES

None.

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STATUS OF CLAIMS

Claims 10-21 are pending.

Claims 1-9 are cancelled, without prejudice.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rackman, (U.S. Pat #4,002,843), in view of Suzuki, (U.S. Pat # 5,790,170).

Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki, in view of Rackman.

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rackman & Suzuki, further in view of Chawla, (U.S. Pat # 6,023,731).

Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chawla, in view of Rackman.

Claims 10-21 are the subject of this appeal.

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STATUS OF AMENDMENTS

No amendments were filed after final rejection.

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SUMMARY OF CLAIMED SUBJECT MATTER

Claim 10 recites a video on demand system that includes a headend adapted to periodically generate a group identifier for broadcast to a group of subscribers associated with the group identifier. The headend is further adapted to receive a request for video on demand data including the group identifier, and to enable one or more modulators associated with the group of subscribers to distribute the video on demand data. (Specification page(s) 1-2, par. 10-14).

Claim 14 recites a video on demand system including a video server and an application server. The application server is adapted to extract a subscriber group identifier received in a request for video on demand data. The video server is adapted to cooperate with the application server to identify one or more of the modulators associated with the subscriber group identifier, and to stream video on demand data to the modulators in response to the request. The video server is adapted to periodically communicate the subscriber group identifier to subscriber terminals associated with the group identifier. (Specification page(s) 1-2, par. 10-14).

Claim 18 recites a video on demand delivery method that includes communicating a subscriber group id to subscriber equipment of a subscriber group. The subscriber group id is distinct from a unique subscriber equipment address, such that the subscriber group id does not form a part of the unique subscriber equipment address. A video on demand data request is received from particular subscriber equipment of the group, the request including the subscriber group id. Video on demand data is streamed to at least one modulator associated with the subscriber group id. A program number of the video on demand data is communicated to the particular subscriber equipment to enable the particular subscriber equipment to tune to the video on demand data. (Specification page(s) 1-2, par. 10-14).

Claim 20 recites a subscriber terminal device that includes means for receiving a program stream including a group identifier (Specification page(s) 1-2, par. 10-14), and for tuning to the program stream and extracting the group identifier (Specification page(s) 1-2, par. 10-14). The terminal device includes means for including the group identifier in a request for video on demand data (Specification page(s) 1-2, par. 10-14), and means for receiving the video on demand data (Specification page(s) 1-2, par. 10-14).

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GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Are claims 10-13 unpatentable over Rackman, (U.S. Pat #4,002,843), in view of Suzuki, (U.S. Pat # 5,790,170)?
2. Is claim 11 unpatentable over Rackman, (U.S. Pat #4,002,843), in view of Suzuki, (U.S. Pat # 5,790,170)?
3. Are claims 18-19 unpatentable over Rackman & Suzuki, further in view of Chawla, (U.S. Pat # 6,023,731)?
4. Are claims 14-17 unpatentable over Suzuki, in view of Rackman?
5. Are claims 20-21 unpatentable over Chawla, in view of Rackman?

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ARGUMENTS

Please consider the following arguments in favor of withdrawing the claim rejections.

1. Are claims 10-13 unpatentable over Rackman, (U.S. Pat #4,002,843), in view of Suzuki, (U.S. Pat # 5,790,170)?

Claim 10 recites a headend adapted to periodically generate a group identifier for broadcast to a group of subscribers associated with the group identifier. The identifier communicated by Rackman is not a group identifier; it is the address of a particular subscriber interface unit. The Examiner argues that this subscriber equipment address in fact contains a 'group identifier' because the most significant bits are the same for groups of subscriber equipment. However, this misses the point. The individual addresses that are communicated in Rackman are not used anywhere to identify groups of subscribers. They are used to identify one particular subscriber. Likewise, the messages in Rackman are not 'broadcast' because they are addressed to individual subscriber units. The examiner argues that the messages are broadcast because they are on the wire and available to other subscriber units to read. This turns the meaning of 'broadcast' on its ear. Under this interpretation, for example, every signal transmitted through the air wirelessly is broadcast because it's possible those other than the intended recipient to which it is addressed could receive it. In fact, the commonly understood meaning of broadcast is that the signal is not addressed to a particular subscriber, but is in fact made available to anyone with a compatible receiver. The messages in Rackman are individually addressed and thus are not 'broadcast'.

2. Is claim 11 unpatentable over Rackman, (U.S. Pat #4,002,843), in view of Suzuki, (U.S. Pat # 5,790,170)?

Claim 11 recites, *inter alia*, the headend adapted to receive, as part of the request for video on demand, a subscriber terminal identifier distinct from the unique group identifier. Rackman teaches that "It is assumed that the 16 subscribers which share the same interface unit have the

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same ten most significant bits in their addresses; the 16 subscribers are separately identifiable by the four least significant bits in the 16 addresses. These four bits are the first which are transmitted in any address and since their exact values make no difference insofar as address recognition by the interface unit of FIG. 3 is concerned, they are not stored in the shift register.”⁴ In other words, Rackman teaches that terminals sharing the same interface unit share the same most significant 10 bits of the terminal address. However, the terminal address provided in Rackman is not distinct from the group identifier. The unique terminal address is formed from 4 least significant bits that ID the terminal from others having same interface unit, and 10 bits that are same for terminals having same interface unit. These bits are all provided together as the terminal address. For at least this reason, there is no teaching or suggestion in Rackman that the headend is adapted to receive, as part of a request for video on demand, a subscriber terminal identifier distinct from a unique group identifier.

Another reason claim 11 is distinct over Rackman is that Rackman discusses receipt of the terminal address by the terminal equipment, whereas claim 11 involves the headend receiving a group identifier distinct from the subscriber address.

Claim 11 further recites assigning to the video on demand data a program slot associated with the one or more modulators and communicating to the subscriber terminal, in response to the request, indications of the selected modulator and the assigned program slot. Neither Rackman nor Suzuki mentions the assigning of video on demand data to a program slot nor the transmission of information to the subscriber terminal specifying indications of a selected modulator and assigned program slot. As near as we can tell, neither reference has any bearing at all on this aspect of claim 11.

MPEP § 2142 states that “.. the prior art reference (or references when combined) must teach or suggest **all** the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. In re Vaack, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).”

3. Are claims 18-19 unpatentable over Rackman & Suzuki, further in view of Chawla, (U.S. Pat # 6,023,731)?

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Claim 18 recites, *inter alia*, communicating a subscriber group id to subscriber equipment of a subscriber group, the subscriber group id distinct from a unique subscriber equipment address, such that the subscriber group id does not form a part of the unique subscriber equipment address. Rackman teaches that a unique terminal address is formed from 4 least significant bits that ID the terminal from others having same interface unit, and 10 bits that are same for terminals having same interface unit. These bits are all provided together in the terminal address that is addressed to particular terminals. No subscriber group ID distinct from a unique subscriber equipment address is provided to the terminal units in Rackman.

See the citation in (2) to MPEP § 2142.

4. Are claims 14-17 unpatentable over Suzuki, in view of Rackman?

Claim 14 recites, *inter alia*, an application server adapted to extract a subscriber group identifier received in a request for video on demand data. No teaching of an application server extracting a subscriber group id from a request for video on demand data can be found in either Suzuki and Rackman. Claim 14 further recites that the video server is adapted to cooperate with the application server to identify one or more of the modulators associated with the subscriber group identifier and to stream video on demand data to the modulators in response to the request. No teaching of such cooperation between a video server and application server is present in either Suzuki or Rackman. In fact, neither reference seems to have any bearing whatsoever on this claim aspect.

See the citation in (2) to MPEP § 2142.

5. Are claims 20-21 unpatentable over Chawla, in view of Rackman?

Claim 20 describes a terminal device having a means for receiving a program stream including a group identifier, and for tuning to the program stream and extracting the group identifier, and a means for including the group identifier in a request for video on demand data.

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No teaching of a terminal device tuning to a program stream and extracting a group id, and/or including the group id in a request for video on demand data, can be found in either Chawla and Rackman. It is simply not a feature of these systems.

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CLAIMS APPENDIX

10. A video on demand system comprising:

a headend adapted to periodically generate a group identifier for broadcast to a group of subscribers associated with the group identifier;

the headend further adapted to receive a request for video on demand data including the group identifier and to enable one or more modulators associated with the group of subscribers to distribute the video on demand data.

11. The headend of claim 10, further adapted to:

receive as part of the request a subscriber terminal identifier distinct from the unique group identifier; and

assign to the video on demand data a program slot associated with the one or more modulators and to communicate to the subscriber terminal, in response to the request, indications of the selected modulator and the assigned program slot.

12. The headend of claim 10 further adapted to:

periodically generate the group identifier for broadcast to the group of subscribers as part of a program stream.

13. The headend of claim 12 further adapted to:

periodically generate the group identifier for broadcast to the group of subscribers as part of an MPEG data program stream.

14. A video on demand system comprising:

a video server and an application server;

the application server adapted to extract a subscriber group identifier received in a request for video on demand data;

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the video server adapted to cooperate with the application server to identify one or more of the modulators associated with the subscriber group identifier and to stream video on demand data to the modulators in response to the request; and

the video server adapted to periodically communicate the subscriber group identifier to subscriber terminals associated with the group identifier.

15. The system of claim 14 further comprising:

the application server and video server adapted to cooperate to stream the video on demand data to subscriber terminals associated with the group identifier, and to enable a particular subscriber terminal that provided the request to view the video on demand data by informing the particular subscriber terminal of a program slot associated with the video on demand data.

16. The system of claim 14 further comprising:

the video server adapted to periodically communicate as part of a program stream the subscriber group identifier to subscriber terminals associated with the group identifier.

17. The system of claim 14 further comprising:

the video server adapted to periodically communicate as part of an MPEG data program stream the subscriber group identifier to subscriber terminals associated with the group identifier.

18. A video on demand delivery method comprising:

communicating a subscriber group id to subscriber equipment of a subscriber group, the subscriber group id distinct from a unique subscriber equipment address, such that the subscriber group id does not form a part of the unique subscriber equipment address;

receiving a video on demand data request from particular subscriber equipment of the group, the request including the subscriber group id;

streaming video on demand data to at least one modulator associated with the subscriber group id;
and

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communicating a program number of the video on demand data to the particular subscriber equipment to enable the particular subscriber equipment to tune to the video on demand data.

19. The method of claim 18 further comprising:
streaming to the subscriber equipment of the subscriber group a program stream including the subscriber group identifier.

20. A subscriber terminal device comprising:
means for receiving a program stream including a group identifier, and for tuning to the program stream and extracting the group identifier;
means for including the group identifier in a request for video on demand data; and
means for receiving the video on demand data.

21. The subscriber terminal of claim 20, further comprising:
means for receiving a program number for the video on demand data, and for tuning to a frequency associated with the program number.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None

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Submitted by:

Signature	/Charles A. Mirho/ Charles A. Mirho Reg. 41,199 Attorney for Applicant	Date: 5/9/2006
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